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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 528

O. L. HASTINGS, ET AL.,

*Petitioners,*

VS.

SELBY OIL & GAS COMPANY, ET AL.,

*Respondents.*

PETITION FOR REHEARING

E. R. HASTINGS,

Tulsa, Oklahoma,

DAN MOODY,

Austin, Texas,

Attorneys for Respondents.

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Respondents Selby Oil & Gas Company and Lewis Production Company, complaining of Petitioners Railroad Commission of Texas, the members of the Railroad Commission of Texas, and O. L. Hastings and C. F. Dodson, petition the Court for a rehearing of the cause, and that on such rehearing the opinion and judgment of the Court of May 24, 1943, be set aside and that the judgment of the Circuit Court of Appeals be affirmed, and as reasons therefor show:

I.

Pretermittin for the present any discussion of questions raised by the claim of rights under the

Fourteenth Amendment, there is a distinction between this suit and Cause No. 495, *G. E. Burford, et al., Petitioners, vs. Sun Oil Company, et al., Respondents*, and between this suit and Cause No. 406, *Sun Oil Company, et al., Petitioners, vs. G. E. Burford, et al., Respondents*, in that the latter mentioned causes involve a number of issues which are to be determined by the application of rules of local law; whereas this suit ultimately involves only one issue to be determined by rules of local law, namely, the law question as to whether or not at the time the challenged order was entered by the Railroad Commission there existed sufficient facts to justify the order. The rules of local law by which this law question is to be determined have been clearly defined by the Supreme Court of Texas. (*Railroad Commission, et al. vs. Shell Oil Company, Inc., et al.*, 139 Tex. 66, 161 S. W. (2d) 1022, 1930; *Cook Drilling Company, et al. vs. Gulf Oil Corporation*, 139 Tex. 80, 161 S. W. (2d) 1035, 1036.)

## II.

This suit does not involve any question of the public policy of the State of Texas or call upon the Courts to take any action in relation to the public policy of the State, for the suit involves only the legal rights of the contending parties in respect to two contentions made by Respondents, which contentions are:

(a) That the necessary result of the challenged order will be to deprive Respondents of their property without due process of law; and,

(b) That at the time the Commission entered the challenged order, there did not exist sufficient facts to justify the Commission action.

The Commission acted in the exercise of *quasi* judicial power in entering the challenged order, as distinguished from legislative power the exercise of which might involve questions of State policy; and the question as to the existence at that time of sufficient facts to justify the Commission action is a question of law and not of State policy.

WHEREFORE, Respondents petition this Court for a rehearing of the cause, and that on such rehearing the opinion and judgment of May 24, 1943, be set aside and that the judgment of the Circuit Court of Appeals be affirmed.

Respectfully submitted,

E. R. HASTINGS,

DAN MOODY,

Attorneys for Respondents.

Counsel for Respondents certify that the foregoing petition for rehearing is presented in good faith and not for delay.

DAN MOODY,

Attorney for Respondents.

Copies of this Petition for Rehearing have been mailed to Messrs. Gerald C. Mann, Attorney General of Texas, E. R. Simmons and Jas. D. Smullen, Assistants Attorney General of Texas, Austin, Texas, and Messrs. W. Edw. Lee, Tyler, Texas, and John Porter, Longview, Texas, attorneys for Petitioners.